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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,093	02/23/2004	Mordecai Dunst	1954-393	3524

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WASHINGTON, DC 20005

EXAMINER

KASZTEJNA, MATTHEW JOHN

ART UNIT	PAPER NUMBER
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3739

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	03/13/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 03/13/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

Office Action Summary	Application No. 10/783,093	Applicant(s) DUNST, MORDECAI	
	Examiner Matthew J. Kasztejna	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 21-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 21-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice of Amendment

In response to the amendment filed on December 11, 2006, new claims 35-45 are acknowledged. The current rejections of the claims *stand*. The following new and reiterated grounds of rejection are set forth:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 and 21-34 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No 5,665,052 to Bullard.

In regards to claims 1 and 27, Bullard discloses a blade assembly for a laryngoscope 20 including a handle 50, the blade assembly comprising; base for coupling to the handle; an elongated blade 30 secured to the base, the elongated blade having a proximal end, a distal end, an upper surfaces and a lower surface, the lower surface of the elongated blade being secured to the base at the proximal end a first guide tube 60 secured to the upper surface of the elongated blade and having a proximal end and a distal end; and a second guide tube 68 secured to the upper surface of the elongated blade adjacent the first guide tube and having a proximal end and a distal end, the first and second guide tubes being constructed and arranged to direct

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tubes extended therethrough into the oral cavity of a patient (see Fig. 2 and Col. 4, Lines 45-65).

In regards to claims 2 and 28, Bullard discloses a blade assembly for a laryngoscope, wherein the first guide tube is substantially straight and the second guide tube is curved (see Fig. 1).

In regards to claims 3 and 29, Bullard discloses a blade assembly for a laryngoscope, wherein the elongated blade is curved.

In regards to claim 4, Bullard discloses a blade assembly for a laryngoscope, further comprising a light attached to the elongated blade (see Col. 4, Lines 20-40).

In regards to claim 5, Bullard discloses a blade assembly for a laryngoscope, further comprising a tongue deflector having a portion extending in a direction transverse to the upper surface of the elongated blade along a marginal edge segment of the elongated blade (see Col. 1 Lines 60-67).

In regards to claims 6 and 34, Bullard discloses a blade assembly for a laryngoscope, wherein the first and second guide tubes are oriented at different angles of attack with respect to the elongated blade so that when the elongated blade is placed atop the tongue of a patient to effect laryngeal suspension, the first and second guide tubes direct respective tubes extended therethrough into different regions of the patient's oral cavity (see Figs. 3-4).

In regards to claims 21 and 30, Bullard discloses a blade assembly for a laryngoscope, wherein the proximal end of the first guide tube and the proximal end of

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the second guide tube are both positioned at the proximal end of the elongated blade (see Fig. 1).

In regards to claims 22-24 and 31-32, Bullard discloses a blade assembly for a laryngoscope, wherein the guide tubes are secured via a connection 62 which allows the tubes to be advanced and retracted (see col. 5, Lines 8-33). Thus the guide tubes are capable of being in any position as desired by the operator.

In regards to claims 25-26 and 33, Bullard discloses a blade assembly for a laryngoscope, further comprising a first aspiration tube inserted into the first guide tube and a second aspiration tube inserted into the second guide tube (see Col. 4, Lines 50-65).

Claims 35-45 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,203,320 to Augustine.

In regards to claim 35, Augustine discloses a blade assembly, comprising: base 206 for coupling to a handle 202 of a laryngoscope; a blade 290 secured to the base, the blade having a proximal end, a distal end, an upper surface, and a lower surface, the lower surface of the blade being secured to the base at the proximal end; a first guide tube (294, 296, 298) secured to the upper surface of the blade and having a proximal end and a distal end; and a second guide tube (294, 296, 298) secured to the upper surface of the blade and having a proximal end and a distal end, wherein the first guide tube being constructed and arranged to direct a first tube extended therethrough into an oral cavity of a patient, the second guide tube being constructed and arranged to direct a second tube extended therethrough into the oral cavity of a patient, and the first

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guide tube is not disposed within the second guide tube and the second guide tube is not disposed within the first guide tube (See Figs. 24-26 and Col. 13, Lines 21-67).

In regards to claim 36, Augustine discloses a blade assembly for a laryngoscope, wherein the first guide tube is substantially straight and the second guide tube is curved (see Fig. 25).

In regards to claim 37, Augustine discloses a blade assembly for a laryngoscope, wherein the elongated blade is curved (see Fig. 23).

In regards to claim 38, Augustine discloses a blade assembly for a laryngoscope, further comprising a light attached to the elongated blade (see Col. 14, Lines 23-37).

In regards to claim 39, Augustine discloses a blade assembly for a laryngoscope, further comprising a tongue deflector having a portion extending in a direction transverse to the upper surface of the elongated blade along a marginal edge segment of the elongated blade (see Figs 18-22 and Col. 14, Lines 39-67).

In regards to claim 40, Augustine discloses a blade assembly for a laryngoscope, wherein the first and second guide tubes are oriented at different angles of attack with respect to the elongated blade so that when the elongated blade is placed atop the tongue of a patient to effect laryngeal suspension, the first end second guide tubes direct respective tubes extended therethrough into different regions of the patient's oral cavity (see Figs. 24-25).

In regards to claims 41-44, Augustine discloses a blade assembly for a laryngoscope, wherein the proximal end of the first guide tube and the proximal end of

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the second guide tube are both positioned at the proximal end of the elongated blade (see Fig. 25).

In regards to claim 45, Augustine discloses a blade assembly for a laryngoscope, further comprising a first aspiration tube inserted into the first guide tube and a second aspiration tube inserted into the second guide tube (see Col. 12, Lines 35-51).

Response to Arguments

Applicant's arguments filed December 11, 2006 have been fully considered but they are not persuasive.

Applicant states that Bullard fails to disclose a second guide tube secured to the upper surface of the elongated blade adjacent the first guide tube. However, Bullard teaches of placing tubes coaxially with respect to one another and thus meets the limitations of the recited claims. In the broadest interpretation of the claim, the tubes are adjacent by definition as they are lying near, close or contiguous to one another.

Applicant states that Bullard fails to disclose a device wherein the first guide tube is substantially straight and the second guide tube is curved. However, as broadly as claimed, Bullard discloses a first guide tube that is *substantially* straight and a second guide tube that is curved (see Fig. 1). The term "*substantially*" in the claim is a relative term and is not defined by the claim.

Applicant states that Bullard fails to disclose a device wherein the first and second guide tubes are oriented at different angles of attack with respect to the elongated blade. However, the guide tubes of Bullard can be separated and moved

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independently of each other. Thus, they are fully capable of being oriented at different angles of attack (see Figs. 5-6 and Col. 5, Lines 8-47). As broadly as claimed, Bullard meets the limitation of the recited claims.

Applicant states that Bullard fails to disclose two guide means and two aspiration tubes for a total of four elements. The word "for" in the claim may be properly interpreted as "capable of," and "capable of" does not require that reference actually teach the intended use of the element, but merely that the reference does not make it so it is incapable of performing the intended use. Thus the claim limitations result in only requiring two guide tubes. Furthermore, Bullard teach the endotracheal tube 68 may be a single lumen or a double lumen tube (See Col. 4, Lines 52-65). Thus, if a double lumen tube were incorporated into the device, Bullard would fully anticipate the recited claims as broadly as claimed.

Applicant's arguments with respect to claims 35-45 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Kasztejna whose telephone number is (571) 272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.

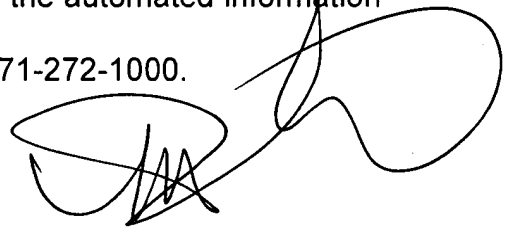
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJK *md*

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